

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP

JONATHAN S. ABADY
MATTHEW D. BRINCKERHOFF
ANDREW G. CELLI, JR.
RICHARD D. EMERY
DEBRA L. GREENBERGER
DIANE L. HOUK
DANIEL J. KORNSTEIN
JULIA P. KUAN
HAL R. LIEBERMAN
ILANN M. MAAZEL
KATHERINE ROSENFELD
ZOE SALZMAN
SAM SHAPIRO
EARL S. WARD
O. ANDREW F. WILSON

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbawm.com

MONDAIRE JONES
VASUDHA TALLA

ERIC ABRAMS
NICK BOURLAND
HANNAH BRUDNEY
DANIEL M. EISENBERG
ARIADNE M. ELLSWORTH
SARA LUZ ESTELA
LAURA S. KOKOTAILO
SONYA LEVITOVA
SARAH MAC DOUGALL
SANA MAYAT
HARVEY PRAGER
VIVAKE PRASAD
MAX SELVER
EMILY K. WANGER
RACHAEL WYANT

June 14, 2014

Via ECF

The Honorable Judith C. McCarthy
The Hon. Charles L. Brieant Jr.
Federal Building and United States Courthouse
300 Quarropas St.
White Plains, NY 10601-4150

Re: *Liza Pizarro, as the Administrator of the Estate of Daruis Pizarro v. Westchester County, et al.*, 24 Cv. 331 (KMK) (JCM)

Dear Judge McCarthy:

We represent Plaintiff in this matter. We write to request that the Court grant a two-week extension of Plaintiff's deadline to file an Amended Complaint adding the United States as a party. *See* ECF No. 23 (Case Management and Scheduling Order) ("Plaintiff may seek to amend its pleading to add claims against the United States by June 14, 2024, pursuant to Fed. R. Civ. P. 15(a)(2)."). The current deadline is today, June 14, 2024. Plaintiff has not previously requested an extension in this matter. Defendants consent to this request.

As the Court will recall, this case concerns the death by suicide of a 22-year old man, Daruis Pizarro, who was a federal pre-trial detainee held at the Westchester County Jail for two months in 2022, where he experienced a psychotic decompensation. Mr. Pizarro was transferred by the United States Marshals Service to the federal Metropolitan Detention Center operated by the Bureau of Prisons, where he died on October 19, 2022, the day of his transfer. Under the Case Management and Scheduling Order, Plaintiff was granted until today to seek to add the United States as a party in this action. Plaintiff now requests this extension for four reasons.

First, Plaintiff requires more time to review 1,700 pages of documents produced to our office on Wednesday, June 12, 2024 at 4:45pm by the United States Marshals Service ("USMS") in response to her *Touhy* request and subpoena served to USMS on April 22, 2024. The USMS documents relate directly to Mr. Pizarro's time in USMS custody and death by suicide, and

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP

Page 2

therefore are critical to the amended pleading. Since Wednesday, Plaintiff has diligently reviewed these materials, but requires more time to complete this review process and incorporate new facts into the amended pleading.

Second, USMS designated all these newly produced documents as confidential under the Protective Order. ECF No. 31. Plaintiff also seeks this extension to allow more time to consult with counsel for the USMS from the United States Attorney's Office for the Southern District of New York ("USAO SDNY") about its designations and whether any portion of the amended pleading should be filed under seal.

Third, Plaintiff has not yet received documents from the Bureau of Prisons ("BOP") in response to Plaintiff's *Touhy* request and subpoena served on the BOP on April 22, 2024. These documents will also bear directly on the allegations in the amended pleading. Counsel for BOP (also from the USAO SDNY) informed Plaintiff this week that it had located "a substantial number of the documents requested" and is working on a production which it anticipates will be made either today or Monday June 17, 2024. We understand that some additional time was required to complete this production to Plaintiff because of the Jewish holiday this week.

Finally, Plaintiff intends to provide the proposed amended pleading to Defendants to seek their consent to its filing. In light of the above production schedules by USMS and BOP, Plaintiff requires additional time to allow Defendants to review the proposed pleading.

In light of USMS's and BOP's schedule in producing documents that bear directly on Plaintiff's allegations in her proposed amended pleading, Plaintiff submits that good cause exists under Fed. R. Civ. P. 16 to amend the current deadline. "Whether good cause exists depends on the diligence of the moving party. In other words, the movant must show that the deadlines [could not have been] reasonably met despite its diligence." *Volunteer Fire Association of Tappan, Inc. v. County of Rockland*, No. 09-CV-4622, 2010 WL 4968247, at *3 (S.D.N.Y. Nov. 24, 2010) (internal citations and quotation marks omitted). Plaintiff has diligently attempted to obtain these critical documents from the federal government via *Touhy* requests served two months ago, followed up extensively with federal agency counsel to ensure a timely production in advance of the deadline set by the Court, reviewed voluminous documents produced by USMS 36 hours ago as expeditiously as possible, and still not received a "substantial" number of relevant documents from the BOP that are expected today or Monday. Plaintiff respectfully submits that she has shown diligence in attempting to meet the Court's deadline and that circumstances beyond her control now necessitate this request.

Plaintiff's requested extension to file her amended pleading will not prejudice any party or impact the ongoing discovery against the current Westchester County defendants. The parties have scheduled five depositions (two of the individual defendants and three non-party witnesses) starting on June 21, 2023, and are otherwise proceeding on schedule with fact discovery.

For the foregoing reasons, Plaintiff requests that the Court grant an extension of Plaintiff's deadline to file an Amended Complaint adding the United States as a party until June 28, 2024.

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP
Page 3

The Court's attention to this matter is appreciated.

Respectfully submitted,

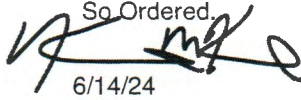
/s/ Katherine Rosenfeld

Katherine Rosenfeld
Ariadne Ellsworth
Counsel for Plaintiff

cc. All Counsel of Record

Granted.

So Ordered.

A handwritten signature in black ink, appearing to be 'MK', is written over the text 'So Ordered.' and the date '6/14/24'.

6/14/24